

EDNA MAE GRAHAM)	
Claimant)	
VS.)	
)	Docket No. 219,395
RUBBERMAID SPECIALTY PRODUCTS)	
Respondent)	
)	
AND)	
)	
RUBBERMAID SPECIALTY PRODUCTS, INC.)	
Insurance Carrier)	

After reviewing the record and considering the briefs of the parties, the Appeals Board finds the issues raised by respondent are not jurisdictional issues and the Appeals Board is therefore not authorized to review the Order at this stage of the proceeding.

Claimant alleges she was injured in June of 1995 and each working day thereafter. Respondent authorized treatment with James L. Gluck, M.D. Dr. Gluck released claimant with restrictions on December 11, 1996. Although Dr. Gluck stated that he would see claimant on an as-needed basis, his records reflect that he did not feel there was anything else he could do for claimant.

Claimant now asks for additional medical treatment. Rather than return to Dr. Gluck, claimant filed an Application for Preliminary Hearing and requested that Dr. Fluter be designated as the treating physician. At the conclusion of the evidentiary hearing, the Administrative Law Judge granted claimant's request. The Administrative Law Judge also granted temporary total disability until released by Dr. Fluter to return to substantial and gainful employment.

Respondent argues that the Administrative Law Judge violated provisions of K.S.A. 1996 Supp. 44-510(c)(1) which states in pertinent part as follows:

"If the director finds, upon application of an injured employee, that the services of the health care provider furnished as provided in subsection (a) and rendered on behalf of the injured employee are not satisfactory, the director may authorize the appointment of some other health care provider. In any such case, the employer shall submit the names of three health care providers that are not associated in practice together. The injured employee may select one from the list who shall be the authorized treating health care provider."

As above indicated, the Appeals Board has concluded the respondent's appeal does not raise a jurisdictional issue subject to review. Anticipating this question, respondent cites the decision by the Appeals Board in Chilargi v. W. H. Braums, Inc., Docket No. 198,309 (June 1996). In that case, a decision rendered by one member of the Appeals Board, it was determined that a decision to change physicians without first allowing the respondent to provide a list of three physicians exceeds the jurisdiction of the administrative law judge. In that case the decision by the Administrative Law Judge was, on that basis, reversed.

However, the majority of the Appeals Board views the issue of jurisdiction differently. Jurisdiction is described in Allen v. Craig, 1 Kan. App. 2d 301, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977), as follows:

"Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly." (Citations omitted.)

The workers compensation administrative court has limited jurisdiction. Its subject matter jurisdiction is limited to cases involving accidental injury arising out of and in the course of employment. Whether claimant suffered accidental injury and whether the injury arose out of and in the course of employment are, therefore, designated in K.S.A. 44-534a as jurisdictional issues. Personal jurisdiction requires notice and timely written claim. Notice and written claim are designated as jurisdictional issues under K.S.A. 44-534a. Whether the administrative law judge must, in a given set of circumstances, authorize treatment from a list of three physicians designated by respondent is not a question which goes to the jurisdiction of the administrative law judge. The administrative law judge has the jurisdiction to decide this question. See Briceno v. Wichita Inn West, Docket No. 211,226 (February 1997). Furthermore, in this case the Administrative Law Judge specifically found that respondent was not providing medical treatment. Citing the Appeals Board's decision in Drake v. Wilson County, Docket No. 192,317 (July 1995), the Administrative Law Judge found Dr. Gluck's release of claimant with the recommendation that he has nothing further to offer claimant by way of medical treatment, is the equivalent of no medical care.

Similarly, the question of whether claimant is temporarily and totally disabled is not an issue that concerns that which the Board has the jurisdiction to review on an appeal from a preliminary hearing order. See K.S.A. 1996 Supp. 44-551(b)(2)(A).

WHEREFORE, the Appeals Board finds and concludes that the appeal by the respondent should be dismissed as the Appeals Board is without jurisdiction to consider the issues raised and the Order by the Administrative Law Judge dated February 21, 1997, should, and does, remain in effect as originally entered.

IT IS SO ORDERED.

Dated this ____ day of June 1997.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
David S. Wooding, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director